法學英文

攻略 II

Legal English

林利芝 /編著

新學林出版股份有限公司

Legal English

本書每一篇皆從英文原文的案例出發，到最後的測驗複習，每一環節的精心設計都出自於作者自身教學經驗所得。經由這樣的導引，讀者可以逐步攻略法學英文當中的“閱讀技巧”、“搜尋技巧”、“分析技巧”以及“寫作技巧”。這些技巧可以幫助讀者眼明手快地找出法律爭議，自信滿滿地去適用解決爭議的法律或法則，並且能舉一反三地將法律或法則靈活運用在其他的具體事實情況。經過這樣長期的訓練累積，讀者便能有條理地分析與應用，進而躋身成為具有十足國際競爭力的法律人。

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寫在前面

許多法律人認為，目前律師考試科目並無法學英文一門，因此對於學校所開設的英美法學習較不熱衷。雖然通過律師考試是目前成為我國律師的主要途徑，但是臺灣的法律系學生與律師必須了解，對身處於國際地球村時代的法律人而言，涉獵多國法律是相當必要的，而英美法更應是學習外國法律的重點。

學習英美法，從案例直攻，對於法律人有很多的好處：

第一，幫助法律人打破平日所自囿的思考模式，以更開闊的視野面對律師考試或其他類型的考試。像是法學英文“閱讀技巧”的訓練，可以幫助讀者迅速找出法律爭議。“搜尋技巧”可以用來確認適用在法律爭議上的法律或法則。“分析技巧”可以將正確的法律或法則適用在具體的事實情況。而“寫作技巧”則能幫助讀者有條理地分析考題。

第二，讀者可以從案例的研讀學習到律師執業技巧，對日後的生涯規劃有相當大的幫助。臺灣的經濟繁榮和政治安定吸引許多外國人士來臺觀光或投資，每分鐘有數以百計的國際商業交易，每天更有數以千計的臺灣旅客在世界各國旅行。面對往來頻繁，像是造成死亡或人身財產傷害的犯罪行為、違約行為、和侵權行為在臺灣境內、外層出不窮，而這些紛爭皆需倚靠律師的協助來解決。尤其臺灣已經加入世界貿易組織，在不久的將來，外國律師將被允許在臺灣執行涉外法律事務。屆時，唯有法學英語流利、精通外國法律（尤其是英美法）、並且具備解決跨國爭議經驗的本國律師，才能輕鬆面對外國律師（尤其是美國律師）競爭下的強大壓力。

第三，對於想要精通專利法、著作權法、商標法、營業秘密法、及公平交易法等新興法律領域的讀者有非常大

的幫助。臺灣許多法律受到英美法，尤其是美國法的影響甚深。眾多法律的制定與修正，亦經常借鏡美國的相關的法律制度。研讀美國法律和案例的英文原文，很自然地會學習到法律條文中專用的法學英文字彙，並且直接地了解這些法律設計的目的，進而去比較我國與美國法律的差異與制度的優劣，最後有能力去重新審視並建構適合我國國情的法律。

第四，對於具有提昇台灣國際競爭力使命的法律人更需要藉由法學英文的研讀增強自己的實力。以目前臺灣的形勢迫切地需要兼備英語能力的律師，代表臺灣出席世界貿易組織所（WTO）或其他國際組織。雖然臺灣已在國際上擔當大任，但是因為中國大陸的阻撓和打壓，使得臺灣不被認同是一個“主權獨立”的國家，而無法成為聯合國的會員。為突破中國大陸所造成的政治孤立，臺灣雖然積極地參與許多國際組織，但是在多國貿易協商中，因缺乏強勢的法律代表捍衛臺灣人民的權益，經常使台灣在國際上屈居下風。英語已然是全世界通用的語言，而法律則是全世界統合的基礎，必須了解只有仰賴全世界都聽得懂的語言，表達立場才能突破台灣現有的格局，與世界各國建立起此對等的聯繫。

本書的目的是希望法律人在了解到學習法律英文的好處以及重要性之後，能用不同的心情面對這門學科。也希望藉由本書可以減少法律人在學習英美法時所產生的焦慮與苦惱。本書是根據作者身為美國法學院 J.D. 學生的經驗來撰寫，希望讀者在閱讀本書之後能用更寬闊的視野面對自己的法律專業。

林利芝　　台北，2004.03

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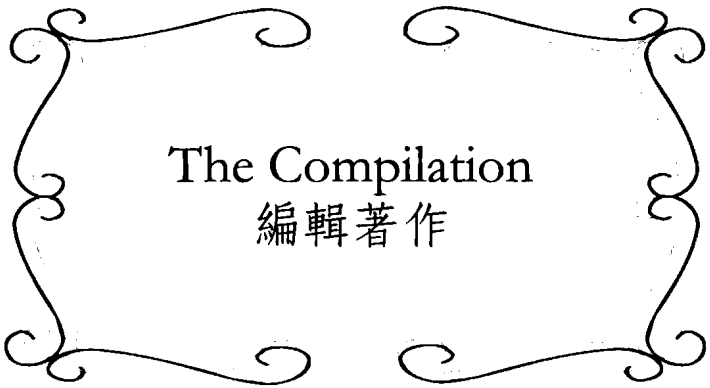

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Feist Publications, Inc. v. Rural Telephone Service Co., Inc.,
499 U.S. 340 (1991).

原文

This case requires us to clarify the extent of copyright protection available to telephone directory white pages.

Rural Telephone Service Company, Inc., is a certified public utility that provides telephone service to several communities in northwest Kansas. It is subject to a state regulation that requires all telephone companies operating in Kansas to issue annually an updated telephone directory. Accordingly, as a condition of its monopoly franchise, Rural publishes a typical telephone directory, consisting of white pages and yellow pages. The white pages list in alphabetical order the names of Rural's subscribers, together with their towns and telephone numbers. The yellow pages list Rural's business subscribers alphabetically by category and feature classified advertisements

of various sizes. Rural distributes its directory free of charge to its subscribers, but earns revenue by selling yellow pages advertisements.

Feist Publications, Inc., is a publishing company that specializes in area-wide telephone directories. Unlike a typical directory, which covers only a particular calling area, Feist's area-wide directories cover a much larger geographical range, reducing the need to call directory assistance or consult multiple directories. The Feist directory that is the subject of this litigation covers 11 different telephone service areas in 15 counties and contains 46,878 white pages listings -- compared to Rural's approximately 7,700 listings. Like Rural's directory, Feist's is distributed free of charge and includes both white pages and yellow pages. Feist and Rural compete vigorously for yellow pages advertising.

As the sole provider of telephone service in its service area, Rural obtains subscriber information quite easily. Persons desiring telephone service must apply to Rural and provide their names and addresses; Rural then assigns them a telephone number. Feist is not a telephone company, let alone one with monopoly status, and therefore lacks independent access to any subscriber information. To obtain white pages listings for its area-wide directory, Feist approached each of the 11 telephone companies operating in northwest Kansas and offered to pay for the right to use its white pages listings.

Of the 11 telephone companies, only Rural refused to license its listings to Feist. Rural's refusal created a problem for Feist,

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as omitting these listings would have left a gaping hole in its area-wide directory, rendering it less attractive to potential yellow pages advertisers. In a decision subsequent to that which we review here, the District Court determined that this was precisely the reason Rural refused to license its listings. The refusal was motivated by an unlawful purpose "to extend its monopoly in telephone service to a monopoly in yellow pages advertising."

Unable to license Rural's white pages listings, Feist used them without Rural's consent. Feist began by removing several thousand listings that fell outside the geographic range of its area-wide directory, then hired personnel to investigate the 4,935 that remained. These employees verified the data reported by Rural and sought to obtain additional information. As a result, a typical Feist listing includes the individual's street address; most of Rural's listings do not. Notwithstanding these additions, however, 1,309 of the 46,878 listings in Feist's 1983 directory were identical to listings in Rural's 1982-1983 white pages. Four of these were fictitious listings that Rural had inserted into its directory to detect copying.

Rural sued for copyright infringement in the District Court for the District of Kansas taking the position that Feist, in compiling its own directory, could not use the information contained in Rural's white pages. Rural asserted that Feist's employees were obliged to travel door-to-door or conduct a telephone survey to discover the same information for themselves. Feist responded that such efforts were economically impractical and, in any event, unnecessary because the information copied

was beyond the scope of copyright protection. The District Court granted summary judgment to Rural, explaining that "courts have consistently held that telephone directories are copyrightable" and citing a string of lower court decisions. The Court of Appeals for the Tenth Circuit affirmed "for substantially the reasons given by the district court." We granted certiorari to determine whether the copyright in Rural's directory protects the names, towns, and telephone numbers copied by Feist.

This case concerns the interaction of two well-established propositions. The first is that facts are not copyrightable; the other, that compilations of facts generally are. Each of these propositions possesses an impeccable pedigree. That there can be no valid copyright in facts is universally understood. The most fundamental axiom of copyright law is that no author may copyright his ideas or the facts he narrates." Rural wisely concedes this point, noting in its brief that "facts and discoveries, of course, are not themselves subject to copyright protection." At the same time, however, it is beyond dispute that compilations of facts are within the subject matter of copyright. Compilations were expressly mentioned in the Copyright Act of 1909, and again in the Copyright Act of 1976.

There is an undeniable tension between these two propositions. Many compilations consist of nothing but raw data -- i.e., wholly factual information not accompanied by any original written expression. On what basis may one claim a copyright in such a work? Common sense tells us that 100 uncopyrightable facts do not magically change their status when gathered together

in one place. Yet copyright law seems to contemplate that compilations that consist exclusively of facts are potentially within its scope.

The key to resolving the tension lies in understanding why facts are not copyrightable. The *sine qua non* of copyright is originality. To qualify for copyright protection, a work must be original to the author. Original, as the term is used in copyright, means only that the work was independently created by the author (as opposed to copied from other works), and that it possesses at least some minimal degree of creativity. To be sure, the requisite level of creativity is extremely low; even a slight amount will suffice. The vast majority of works make the grade quite easily, as they possess some creative spark, "no matter how crude, humble or obvious" it might be. Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying. To illustrate, assume that two poets, each ignorant of the other, compose identical poems. Neither work is novel, yet both are original and, hence, copyrightable.

Originality is a constitutional requirement. The source of Congress' power to enact copyright laws is Article I, §8, cl. 8, of the Constitution, which authorizes Congress to "secure for limited Times to Authors . . . the exclusive Right to their respective Writings." In two decisions from the late 19th century -- *The Trade-Mark Cases*; and *Burrow-Giles Lithographic Co. v. Sarony* -- this Court defined the crucial terms "authors" and "writings." In so doing, the Court made it unmistakably

clear that these terms presuppose a degree of originality.

The originality requirement articulated in The *Trade-Mark Cases* and *Burrow-Giles* remains the touchstone of copyright protection today. It is the very "premise of copyright law." It is this bedrock principle of copyright that mandates the law's seemingly disparate treatment of facts and factual compilations. "No one may claim originality as to facts." This is because facts do not owe their origin to an act of authorship. The distinction is one between creation and discovery: The first person to find and report a particular fact has not created the fact; he or she has merely discovered its existence.

Factual compilations, on the other hand, may possess the requisite originality. The compilation author typically chooses which facts to include, in what order to place them, and how to arrange the collected data so that they may be used effectively by readers. These choices as to selection and arrangement, so long as they are made independently by the compiler and entail a minimal degree of creativity, are sufficiently original that Congress may protect such compilations through the copyright laws. Thus, even a directory that contains absolutely no protectible written expression, only facts, meets the constitutional minimum for copyright protection if it features an original selection or arrangement.

This protection is subject to an important limitation. The mere fact that a work is copyrighted does not mean that every element of the work may be protected. Originality remains the *sine qua non* of copyright; accordingly, copyright protection

may extend only to those components of a work that are original to the author. Thus, if the compilation author clothes facts with an original collocation of words, he or she may be able to claim a copyright in this written expression. Others may copy the underlying facts from the publication, but not the precise words used to present them.

Where the compilation author adds no written expression but rather lets the facts speak for themselves, the expressive element is more elusive. The only conceivable expression is the manner in which the compiler has selected and arranged the facts. Thus, if the selection and arrangement are original, these elements of the work are eligible for copyright protection. No matter how original the format, however, the facts themselves do not become original through association.

This inevitably means that the copyright in a factual compilation is thin. Notwithstanding a valid copyright, a subsequent compiler remains free to use the facts contained in another's publication to aid in preparing a competing work, so long as the competing work does not feature the same selection and arrangement.

It may seem unfair that much of the fruit of the compiler's labor may be used by others without compensation. As Justice Brennan has correctly observed, however, this is not "some unforeseen byproduct of a statutory scheme." It is, rather, "the essence of copyright," and a constitutional requirement. The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful

Arts." To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This principle, known as the idea/expression or fact/expression dichotomy, applies to all works of authorship. As applied to a factual compilation, assuming the absence of original written expression, only the compiler's selection and arrangement may be protected; the raw facts may be copied at will.

This Court has long recognized that the fact/expression dichotomy limits severely the scope of protection in fact-based works. More than a century ago, the Court observed: "The very object of publishing a book on science or the useful arts is to communicate to the world the useful knowledge which it contains. But this object would be frustrated if the knowledge could not be used without incurring the guilt of piracy of the book." We reiterated this point in *Harper & Row, Publishers, Inc. v. Nation Enterprises*: "No author may copyright facts or ideas. The copyright is limited to those aspects of the work -- termed 'expression' -- that display the stamp of the author's originality. Copyright does not prevent subsequent users from copying from a prior author's work those constituent elements that are not original -- for example . . . facts, or materials in the public domain -- as long as such use does not unfairly appropriate the author's original contributions."

This, then, resolves the doctrinal tension: Copyright treats facts and factual compilations in a wholly consistent manner. Facts, whether alone or as part of a compilation, are not original and therefore may not be copyrighted. A factual compilation

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